

REMARKS

Claims 1, 3-8, 10, 12-15, 17-19, 21-24, 26-42, 44, 45, 47-51 and 56-58 are pending in this application. Claims 26 and 37 have been amended. Claims 53-55 have been canceled. Claim 11 is allowed. No new matter has been added.

Rejections Under 35 U.S.C. §102(e)

Claims 26-27, 30, 37, and 56-58 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. published application No. 2002/0156965 to Gusler et al. (“Gusler”). Applicants respectfully traverse this rejection.

A. Claims 26-27

As amended, claim 26 recites a method performed in a computer system having at least first and second backup storage systems to each store backup data from at least one client, the at least first and second backup storage systems storing different backup data. The method comprises an act of receiving information related to backup activities of the second backup storage system at the first backup storage system.

Gusler fails to meet the limitations of amended claim 26. Gusler discloses a method for performing a network-based backup whereby a client creates a “backup image” of applications and data stored thereon (¶38). The client stores the backup image locally, so that periodically a server may retrieve the image (¶38). Upon retrieval, the server stores the backup image as a “seed file,” which Gusler states may be used to restart the client if a backup image is not available on the client (¶39). Thus, the seed file of Gusler is a copy of the data comprising the backup image.

The Office Action asserts that the backup image on the client corresponds to the first backup storage system, and that the seed file on the server corresponds to a second backup storage system. The Office Action also asserts that the transfer of the backup image between the server and client corresponds to receiving information related to backup activities of a second backup storage system at the first backup storage system. Thus, according to the interpretation of Gusler espoused by the Office Action, the backup data from the at least one client (i.e., the backup image created by the client) is stored on both the first and second backup storage systems

(i.e., the client and the server). In contrast, amended claim 26 recites that the at least first and second backup storage systems store different backup data. As a result, claim 26 distinguishes over Gusler, such that the rejection of claim 26 under 35 U.S.C. §102(e) over Gusler should be withdrawn.

Claim 27 depends from claim 26, and is allowable for at least the same reasons.

#### B. Claim 30

Claim 30 recites a first backup storage system to store backup data from at least one first client, the first backup storage system for use in a computer system having a second backup storage system to store backup data from at least one second client. The first backup storage system comprises a first controller, coupled to the second backup storage system, to receive information related to backup activities of the second backup storage system.

Gusler fails to meet the limitations of claim 30. As discussed above with reference to claim 26, Gusler discloses a system wherein backup data from a client is stored on both the client and a server. That is, in the system disclosed by Gusler, a body of backup data from a client is stored on both a first and a second backup storage system. In contrast, claim 30 recites a first backup storage system which stores backup data from at least a first client, and a second backup storage system which stores backup data from at least a second client. As such, the backup data stored on the first backup storage system is not the same as the backup data stored on the second backup storage system. Hence, claim 30 distinguishes over Gusler, and the rejection of claim 30 under 35 U.S.C. §102(e) over Gusler should be withdrawn.

#### C. Claim 37

As amended, claim 37 recites a computer readable medium encoded with a program for execution on a computer system that includes first and second backup storage systems coupled together, the first and second backup storage systems each storing backup data from at least one client, the at least first and second backup storage systems each storing different backup data. The program, when executed on the computer system, performs a method comprising an act of transferring information related to backup activities on the second backup storage system between the second backup storage system and the first backup storage system.

As discussed above with reference to claim 26, Gusler discloses a system wherein the backup data from the at least one client is stored on both the first and the second backup storage systems (i.e., the client and the server). In contrast, amended claim 37 recites that the at least first and second backup storage systems each store different backup data. Thus, claim 37 distinguishes over Gusler, such that the rejection of claim 37 under 35 U.S.C. §102(e) over Gusler should be withdrawn.

D. Claim 56

Claim 56 recites a method, in a computer system having at least one backup storage system to store backup data from at least one client, of providing information related to backup activities of the at least backup storage system, the backup activities including the backing up of at least one work item associated with the at least one client. The method comprises an act of, when the at least one work item is backed up more than once in a given time period by the at least one backup storage system, providing only status of a most recent backup of the at least one work item.

The Office Action fails to explain, as required by 37 CFR §1.104(c)(2), how Gusler meets the specific limitations of claim 56. Thus, Applicants respectfully assert that the rejection of claim 56 is improper and should be withdrawn.

Further, Gusler fails to disclose or suggest anything at all related to providing only a status of a most recent backup of at least one work item when the at least one work item is backed up more than once in a given time period. Thus, claim 56 distinguishes over Gusler, such that the rejection of claim 56 under 35 U.S.C. §102(e) over Gusler should be withdrawn.

Claims 57-58 depend from claim 56 and are allowable for at least the same reasons.

Rejections Under 35 U.S.C. §103(a)

Claims 1, 3-8, 10-15, 17-19, 21-24, 28-29, 31-36, 38-42, 44-45 and 47-51 are rejected under 35 U.S.C. §103(a) as being obvious over Gusler in view of purportedly well-known “multi-homing” techniques in a TCP/IP network. Applicants respectfully traverse this rejection for at least two reasons.

First, this rejection is based on alleged common knowledge in the art concerning “multi-homing” which purportedly would have motivated one of ordinary skill in the art to modify Gusler as alleged in the office action. Applicants respectfully traverse the assertion that any well known prior art exists which would have provided motivation for such a modification. If the rejection is to be maintained, the Examiner is respectfully requested (as required by MPEP §2144.03) to cite a reference to establish on the record the (allegedly well-known) prior art that the Examiner believes exists that would have motivated one skilled in the art to modify Gusler. In addition, MPEP §2144.03 states, *inter alia*, that facts that are purportedly well-known should only be relied upon to “fill in the gaps” in a showing of obviousness, and “should not comprise the principal evidence upon which a rejection is based.” Here, the Examiner’s entire basis for the alleged obviousness of a modification to Gusler is based on these purportedly well-known facts, and is without support in the prior art of record. As a result, Applicants respectfully assert that the rejection is improper under MPEP §2144.03, and should be withdrawn.

In addition, MPEP §2143.01 states that “[i]f a proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” As such, there is no motivation to make the modification to Gusler proposed by the Office Action. The Office Action contends that Gusler, in FIG. 4, discloses a plurality of backup storage systems including a first backup storage system (i.e., backup file system 406) and a second backup storage system (i.e., backup image/seed file 414). The Office Action also contends that, because Gusler discloses that the system of FIG. 1 may include additional servers, clients or other devices (¶22), Gusler discloses a third backup storage system (i.e., a third client with respective backup storage) to store backup data from at least one client. The Office Action further contends that, because Gusler states that network communication may be facilitated via the TCP/IP protocol (¶36), and “it is well-known that” TCP/IP supports “multi-homing” whereby “a single machine may be located on multiple domains,” it would have been obvious to a skilled artisan to employ multi-homing to establish a domain. Finally, the Office Action contends that a domain may be created which includes at least first and second backup storage systems (i.e., two of the clients) and at least one user interface (i.e., central server 104), but excludes the third

backup storage system (i.e., a third client), such that the central server 104 would not be authorized to receive information related to backup activities of the third backup storage system.

These assertions are entirely unsupported by the reference. Gusler discloses a process whereby a central server (i.e., server 104, FIG. 1) retrieves and stores backup images created by all of the clients (¶46-48). Gusler makes no disclosure or suggestion of central server 104 being unauthorized to receive information related to backup activities of any of the clients on the system of FIG. 1. Indeed, this proposed modification would defeat Gusler's stated objectives of (1) ensuring that all of the clients are backed up by the central server on a consistent basis (¶7), and (2) providing a central data repository containing seed files from which any client may be reinstalled in the event of failure (¶39). Thus, Gusler teaches away from the proposed modification. There is no suggestion or motivation to make the modification alleged in the Office Action, as it would not only change the basic principle under which the system of Gusler was designed to operate, but would destroy functionality that Gusler teaches is desirable.

For at least these reasons, the Office Action fails to set forth a *prima facie* case of obviousness. As a result, the rejection of claims 1, 3-8, 10-15, 17-19, 21-24, 28-29, 31-36, 38-42, 44-45 and 47-51 under 35 U.S.C. §103(a) as being obvious in view of Gusler is improper and should be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this response, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below to discuss any outstanding issues relating to the allowability of the application.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, the Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,  
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